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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,867	06/29/2006	Michael Schneider	0262-061920	7715
28289 7590 10/04/2010 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				
EXAMINER				
PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1781				
MAIL DATE		DELIVERY MODE		
10/04/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,867

Applicant(s)

SCHNEIDER ET AL.

Examiner

Carolyn A. Paden

Art Unit

1781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21, 23, 24, 26, 27 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21, 23, 24, 26, 27 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 20, 2010 has been entered.

Claims 21 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant refers to non-fat components in line 3 of both claims. Both whole egg and egg yolk are known in the art to contain fat ingredients. An amendment to the claims pointing out that the egg ingredients intended are non-fat egg ingredients would overcome the rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (5,415,879) in view of Rombauer and further in view of Potter.

Oh discloses fowl eggs made to contain highly unsaturated fatty acids. The source of the unsaturated fat in the eggs of Oh is the feed, which contains oil from fish oil. Table 7, bridging columns 7 and 8 in Group III, at 11 days supplementation, shows that the test eggs contain the level of unsaturated fatty acids required in the product. The longer the chickens are fed a supplemented feed containing fish oil, the higher the C20 unsaturated fatty acid content of the egg lipids. The phospholipids and the non-fat components in the egg would be considered to be egg ingredients. The use of the egg in foods is disclosed in the human metabolic study at column 9, lines 48-55. The claims appear to differ from Oh in the recitation that the fat in the egg is solid. Rombauer reminds use that eggs are commonly prepared by hard cooking them. A hard boiled egg yolk would be expected to form a solid fat containing product. Potter is relied upon to show that egg yolk contains non-fat ingredients in Table 48. It would have been obvious at the time of applicants' invention to hard cook the egg of Oh to form a solid fat whole egg yolk product. It is appreciated that the

carbohydrate content is not mentioned in the references but claims 26-27 do not provide a lower limit for carbohydrate content. One would expect the carbohydrate content of the Oh to fall within the range of the claims for this reason.

Applicant argues that Akimoto and also Oh do not prepare their product in the same way as applicant. This has been considered but is not persuasive. The claims are not directed to a process but are directed to a product. There are no process limitations in the rejected claims.

Applicant has amended the claims to indicate that the fat content of the solid fat is more than 50wt% based on the fat product dry matter. Applicant argues that hard boiled eggs do not have the solid fat content of the claims and also argues that egg yolks, disclosed by Potter in Table 48, have less than 50wt% fat. This has been considered but is not persuasive. Potter's values are based on the wet weight of the egg yolk. Considering that egg yolk contains 48 wt% water, one of ordinary skill in the art would expect hard boiled egg yolks to have the fat content of the claims.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (5,415,879) in view of Rombauer and further in view

of Potter as applied to claims 21, 24, 26 and 27 above, and further in view of Remacle (2004/002292) if necessary.

The claims appear to differ from Oh in the recitation of the carbohydrate content of the egg. Oh manipulates the composition of eggs by adjusting the fat content of the egg and not the carbohydrate content. One of ordinary skill in the art would expect the carbohydrate content of the Oh eggs to be like regular eggs. Remacle teaches the carbohydrate content of egg (Table 4 on page 2) to fall within the amount set forth in the claims. One of ordinary skill in the art, with the carbohydrate content of eggs before him, would expect the carbohydrate content of the eggs of Oh to fall within the range of the claims.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (5,415,879) in view of Rombauer and further in view of Potter as applied to claims 21, 24, 26 and 27 above, and further in view of Hagiwara (6,358,554).

The claims appear to differ from Oh in the recitation that the fat in the egg yolk is solid powder. Hagiwara teaches preparing egg powder in the examples by the use of spray drying. It would have been obvious to one of ordinary skill in the art to spray dry the eggs of Oh to preserve them.

The rejection of the claims based on Akimoto has been withdrawn in response to applicants' amendments to the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Carolyn Paden/

Primary Examiner 1781